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No. 14262

United States
Court of Appeals
For the Ninth Circuit.

PERCY P. DAVIS,

Appellant,

vs.

GUY F. ATKINSON COMPANY, a Corporation,
and J. A. JONES CONSTRUCTION COM-
PANY, a Corporation,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

JUN -8 1954

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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San Francisco, Calif.,

Attorneys for Defendant and Appellee.

In the District Court of the United States, Northern
District of California, Southern Division

No. 28816H

PERCY P. DAVIS,

Plaintiff,

vs.

GUY F. ATKINSON COMPANY, a Corporation,
and J. A. JONES CONSTRUCTION COM-
PANY, a Corporation,

Defendants.

COMPLAINT FOR DAMAGES FOR BREACH
OF CONTRACT

Plaintiff above named, complaining of the defend-
ants in the above-entitled action, states and alleges:

I.

That this action is brought under the provisions
of Title 28, U.S.C., Section 41, and jurisdiction is
conferred upon this Court by that Act.

II.

That during all of the times herein mentioned
said plaintiff was a dentist duly authorized to prac-
tice his profession and maintaining an office in the
City of New York City, State of New York, and
residing in said City of New York City, and that said
plaintiff during all of said times was a member of
the Board of Health of said city.

III.

That during all of the times herein mentioned, said defendants were and now are corporations duly and regularly created and existing and duly authorized to transact business in the State of California. That said defendants, as joint venturers, were during all of said times, and now are, contractors under that certain contract No. W-04-470-Eng-1 with the War Department of the United States for the performance of certain construction work on the Island of Okinawa.

IV.

That during the month of November, 1947, at the City of New York City, State of New York, said defendants hired and employed said plaintiff for the period of not less than one year as a dentist to furnish dental care of an emergency nature only to the employees of said defendants at the site of the work performed by said defendants on the said Island of Okinawa, and said defendants agreed to pay to said plaintiff the sum of \$150.00 per week and to furnish transportation to said plaintiff from the said City of New York City to the said Island of Okinawa. That it was further understood and agreed between said plaintiff and said defendants that said plaintiff could engage in the private practice of dentistry on said Island of Okinawa and could furnish any dental work, other than work of an emergency nature, to the employees of the said defendants or to any other person for such compensation to be paid to said plaintiff as might be

agreed between him and said employees or other persons.

V.

That thereupon said plaintiff, relying upon the agreements and representations made as aforesaid, disposed of and sold his office and dental practice in said City of New York City, restricted himself for several years from practicing his said profession in said City of New York City, resigned from the Board of Health of said City, and sold a large portion of his dental equipment, and all of his furniture and furnishings and other belongings, and his automobile, and said plaintiff gave up his apartment, all at a substantial and serious loss to said plaintiff.

VI.

That thereafter and on the 5th day of December, 1947, at the City of Sausalito, County of Marin, State of California, the terms of the contract between said plaintiff and said defendants were reduced to writing by the said defendants and that a written contract was signed on the said 5th day of December, 1947, between said plaintiff and said defendants. That at the time of the signing and execution of said written contract, said defendants again represented to said plaintiff that the employees of said defendants, employed on the Island of Okinawa, were entitled under their contracts of employment with said defendants, to dental work of an emergency nature only: that said plaintiff could engage in the private practice of dentistry on said Island of Okinawa and furnish any other dental

work desired by said employees or by other persons and receive compensation therefor to be paid by said employees or other persons.

That thereupon, and relying upon the agreements and representations so made as aforesaid by said defendants, said plaintiff shipped to said Island of Okinawa complete Operative, Prosthetic, Crown and Bridge Kits and Engine, all of which equipment had no relation to emergency dental work. That said defendants authorized a special weight allowance to said plaintiff in shipping said equipment.

VII.

That pursuant to the term of said written contract, said defendants caused said plaintiff to be transported to Okinawa, where said plaintiff immediately entered upon the employ of said defendants pursuant to his agreement aforesaid.

VIII.

That after arriving on said Island of Okinawa said plaintiff was notified by said defendants that he could not engage in the private practice of dentistry, and said plaintiff was thereupon prevented by said defendants from engaging in such private practice. That said plaintiff was further notified by said defendants that he did not have a one-year contract but one terminable at the will of said defendants. That thereupon defendants refused and have ever since refused to allow said plaintiff to perform the duties and conditions on

his part of said contract of employment, and refused to pay him thereunder and said plaintiff was discharged and his said contract of employment cancelled and terminated without just cause and against his will.

IX.

That said plaintiff has fulfilled all the terms of his said contract of employment until said defendants cancelled and terminated said contract without reason or cause and contrary to the terms thereof. That said plaintiff has been at all times able, willing and anxious to perform the terms of his said contract of employment and the work for which he had been hired, and that his discharge was and is unlawful and without just cause and against his will and all contrary to and in violation of the terms of his said contract of employment with said defendants.

X.

That upon the termination of said contract and the discharge of said plaintiff, as aforesaid, said defendants refused to furnish to said plaintiff transportation from said Island of Okinawa to his home in New York City, New York, and that said plaintiff received no further compensation or salary or subsistence. That said plaintiff was compelled to and did pay for his subsistence until his return to New York City, and his expenses of transportation and of the transportation of his dental equipment from the Island of Okinawa to New York City, New York.

XI.

That by reason of the unlawful cancellation and termination of said contract of employment and the acts of said defendants as aforesaid, said plaintiff has been damaged in the sum of \$10,000.00 for the loss of his dental practice in New York City; in the further sum of \$2,000.00 for the loss of his position with the New York City Board of Health; in the further sum of \$300.00 for expenses from New York City to Okinawa; in the further sum of \$2,700.00 for expenses of transportation from Okinawa to New York City, including the return of his dental equipment; in the further sum of \$4,150.00 for the loss suffered by him upon the sale of his said automobile, dental equipment and furniture and furnishings.

XII.

That said plaintiff duly filed a claim with said defendants, but that said defendants have failed and refused and do now fail and refuse to pay said sums hereinabove mentioned or any part thereof, to plaintiff's damage in the sum of \$19,150.00.

XIII.

That by reason of the facts aforesaid said plaintiff has been damaged in the further sum of \$25,000.00 as and for general damages.

Wherefore, plaintiff prays judgment against defendants, and each of them in the sum of \$25,000.00 general damages, and the further sum of \$19,150.00 special damages, together with his costs and disbursements herein incurred, and for such other and

further relief as to the Court may seem just and proper.

/s/ G. H. VAN HARVEY,

/s/ PAUL C. THORNE,

Attorneys for Plaintiff.

Duly verified.

[Endorsed]: Filed April 27, 1949.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS

Now come the defendants above named and answer the complaint on file herein as follows:

I.

Defendants allege that the action is brought under the provisions of Title 28 U.S.C. Section 1332, and otherwise leave matters of jurisdiction to the Court.

II.

Defendants have no information or belief as to the allegations of Paragraph II and on such grounds deny said allegations.

III.

Defendants admit the allegations of paragraph III.

IV.

Defendants deny the allegations of paragraph IV, and in this respect allege that on the 5th day of December, 1947, at Sausalito, California, plaintiff and defendants entered into a written contract of

employment, a copy of which is attached hereto, made a part hereof and marked Exhibit A.

V.

Defendants deny the allegations of Paragraph V.

VI.

Answering Paragraph VI defendants admit that on the 5th day of December, 1947, at the City of Sausalito, County of Marin, State of California, plaintiff and defendants entered into the contract hereinabove referred to, and attached hereto as Exhibit A. Deny the remaining allegations of said Paragraph VI.

VII.

Defendants admit the allegations of Paragraph VII

VIII.

Defendants admit that after arriving on said Island of Okinawa plaintiff was notified by defendants that he could not engage in the private practice of dentistry, and in this respect allege that under the terms and conditions of the written contract of employment, Exhibit A, there was no agreement with defendants that plaintiff could engage in the private practice of dentistry and that said private practice of dentistry was not authorized by defendants and that plaintiff did not have the permission of defendants to so engage in the private practice of dentistry on the Island of Okinawa. Defendants deny that plaintiff was further notified at said time by defendants that he did not have a

one-year contract but one terminable at the will of said defendants, and in this respect specifically refer to the terms and conditions of the said written contract between plaintiff and defendants, Exhibit A hereof, and particularly Section 2 thereof, which said contract and said section were in full force and effect at the time alleged in said Paragraph VIII. Defendants deny that defendants thereupon refused and have ever since refused to allow said plaintiff to perform the duties and conditions on his part as set forth in said contract of employment and in this respect allege that plaintiff failed to perform the duties and conditions on his part of said contract of employment. Defendants deny that they refused to pay plaintiff under the terms of said written contract, Exhibit A, and in this respect allege that plaintiff had received payment of any and all sums to which he may have been entitled or which may have been due and owing to him in accordance with the terms and provisions of said written contract of employment, Exhibit A. Defendants admit that plaintiff was discharged and deny that said written contract of employment was cancelled and terminated without just cause and against plaintiff's will, and in this respect allege that plaintiff was discharged for cause in accordance with the terms and provisions of said written contract of employment, Exhibit A.

IX.

Defendants deny the allegations of paragraph IX.

X.

Defendants admit the allegations of paragraph X.

XI.

Defendants deny the allegations of paragraph XI and particularly that plaintiff has been damaged in the sum of \$10,000.00 or any part thereof for the loss of his dental practice; that he has been damaged in the amount of \$2,000.00 or any part thereof for the loss of his position with the New York Health Department; that he has been damaged in the sum of \$300.00 or any part thereof for expenses from New York City to Okinawa; that he has been damaged in the sum of \$2,700.00 or any part thereof for expenses of transportation from Okinawa to New York City, including the return of his dental equipment; that he has been damaged in the sum of \$4,150.00 or any part thereof for the loss suffered by him upon the sale of his said automobile, dental equipment and furniture and furnishings.

XII.

Defendants deny that plaintiff duly filed a claim with defendants. Admit that defendants have failed and refused and do now fail and refuse to pay any of the sums or any part thereof as set forth in paragraph XI of said complaint. Defendants deny that plaintiff has been damaged in the sum of \$19,500.00 or any part thereof.

XIII.

Defendants deny that plaintiff has been damaged in the sum of \$25,000.00 or any part thereof. De-

defendants deny that plaintiff has been damaged in the sum of \$44,150.00 or any part thereof.

As and for a Second, Separate and Distinct Answer and Defense to Plaintiff's Complaint Defendants Allege as Follows:

I.

That plaintiff's complaint does not state facts sufficient to constitute a cause of action.

As and for a Third, Separate and Distinct Answer and Defense to Plaintiff's Complaint Defendants Allege as Follows:

I.

That on the 5th day of December, 1947, at Sausalito, California, plaintiff and defendants made and entered into that certain contract in writing hereinabove referred to and made a part hereof as Exhibit A; that in accordance with the terms and provisions of said contract plaintiff was transported to the Island of Okinawa; that thereafter, contrary to specific instructions given to him by defendants and in violation of the terms and provisions of said contract, Exhibit A, plaintiff conducted the private practice of dentistry while employed under the terms and provisions of said written contract, Exhibit A, on the Island of Okinawa, and did demand and receive fees and gratuities from employees of defendants for dental services rendered to such employees of defendants, all of which dental services in accordance with the terms and provisions of said

written contract, Exhibit A, were to be rendered without charge.

II.

That prior to December 5, 1947, the day upon which the said written contract of employment, Exhibit A, was executed, plaintiff was informed and advised that demand or acceptance of any fees or gratuities by him for dental services rendered by him to employees of defendants would constitute grounds for discharge; that upon plaintiff's arrival at Okinawa he was further advised and warned that demand or acceptance of any fees or gratuities would constitute grounds for discharge, and that notwithstanding such advice and such warning and the provisions of the said written contract of employment, Exhibit A, plaintiff did demand, receive and accept fees and gratuities from said employees of defendants for dental services rendered to such employees in accordance with the terms and provisions of said contract of employment, Exhibit A; that thereafter, in accordance with the terms and provisions of said written contract of employment, Exhibit A, plaintiff was discharged for cause.

III.

That defendants have at all times fully performed all the terms and conditions of said written contract of employment, Exhibit A, on their part to be performed, and have paid to plaintiff in full any and all sums of money to which plaintiff may have been entitled in accordance with the terms and provisions of said written contract of employment, Exhibit A.

Wherefore, defendants pray that the complaint herein be dismissed and defendants have their costs of suit and such other and further relief as may be meet and proper in the premises.

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ C. ELMER COLLETT,
Assistant United States Attorney, Attorneys for
Defendants.

J. A. Jones Construction Company

By

William J. Jones
RECRUITER

Witness

Address

(State)
(City)

Employee's Signature
Henry J. Jones

(State)
(City)

Witness
Hyacinth P. Baranzini
Address

This AGREEMENT executed by the parties named herein as of the date first specified at

SECTION 21. Certification by Employer.
The term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

SECTION 22. Certification by Employer.

SECTION 23. Certification by Employer.

SECTION 24. Certification by Employer.

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SECTION 95. Certification by Employer.

[Title of District Court and Cause.]

INTERROGATORIES PROPOUNDED BY DEFENDANTS TO PLAINTIFF UNDER RULE 33 FEDERAL RULES OF CIVIL PROCEDURE

To: The above-named Plaintiff, and to Paul C. Thorne and G. H. Van Harvey, his attorneys:

The following Interrogatories are hereby propounded to the plaintiff with the request that he answer the same under oath as in said rule provided:

I. During the time you were employed by defendants in Okinawa, did you, in addition to services performed and compensation received under your written agreement with defendants,

(a) Offer to perform dental work for any person or persons in return for remuneration in any form whatsoever?

(b) Agree to perform dental work for any person or persons in return for remuneration in any form whatsoever?

(c) Perform dental work for any person or persons for which you made a charge of any kind?

(d) Perform dental work for any person or persons for which remuneration in any form was received by you?

(e) Offer or agree to perform dental work for any person or persons who delivered to you money, goods, or other property of any kind?

(f) Perform dental work for any person or persons who delivered to you money, goods, or other property of any kind?

(g) Engage on your own account in the private practice of dentistry?

II. If your answer to any of the questions covered by Interrogatory No. I (a) to (g), inclusive, be in the affirmative, please state with respect to each,

(a) The name of the person or persons involved.

(b) The date or dates of the occurrences mentioned.

(c) The nature of the remuneration or property received, charged, or paid.

(d) The nature of the dental work offered, agreed to or performed.

III. What is the name and position of each person who you claim represented to you that you would be entitled to engage in the private practice of dentistry on the Island of Okinawa?

IV. When and where and in whose presence were each such representations made?

/s/ FRANK J. HENNESSY,
United States Attorney;

/s/ C. ELMER COLLETT,
Assistant United States
Attorney;

/s/ ANTOINETTE E. MORGAN,
Assistant United States
Attorney,
Attorneys for Defendants.

[Endorsed]: Filed March 9, 1950.

[Title of District Court of Cause.]

ANSWERS OF PLAINTIFF TO INTERROGATORIES PROPOUNDED BY DEFENDANTS

Comes now Percy P. Davis, plaintiff above named, and in response to the interrogatories numbered I (a) to IV, both inclusive, propounded to him in the above-entitled action, makes the following answers:

Answer to Interrogatory I (a):

Yes.

Answer to Interrogatory I (b):

Yes.

Answer to Interrogatory I (c):

Yes.

Answer to Interrogatory I (d):

Yes.

Answer to Interrogatory I (e):

Yes.

Answer to Interrogatory I (f):

Yes.

Answer to Interrogatory I (g):

Yes, but my private practice of dentistry was limited only to dental procedures above and beyond those of an emergency nature.

Answer to Interrogatory II(a):

E. Covington; Kenneth J. Dowse; Larry Ericks; J. Hagen; J. LaGoda; L. O. Taylor; W. A. Traynor; N. F. Anderson—there may be several others, whose names I do not remember at this time, who received minor elective dental work not classified as immediate or emergency in nature.

Answer to Interrogatory II (b):

I cannot give the exact date or dates of each of said occurrences, but they all appear to have taken place between December 30, 1947, and January 17, 1948.

Answer to Interrogatory II (c):

On January 17, 1948, I received the sum of \$56.00 from E. Covington as deposit in payment for repair of partial, addition of tooth and gold inlay pending an answer to the memorandum which I sent to the management.

On January 11, 1948, I received the sum of \$14.00 from Kenneth J. Dowse as deposit for inlay, pending a reply to my memorandum to the management.

I received no money from Larry Ericks, J. Hagen, J. LaGoda. There may be several other men who were furnished minor elective dental work not classified as immediate or emergency in nature and who paid either in cash or cartons of cigarettes or both. Cigarettes were recognized as a form of exchange in Okinawa at the time on the same basis as cash.

Answer to Interrogatory II (d) :

The dental work which I offered, agreed to or performed for remuneration was dental work other than of an emergency nature.

As I stated I received a deposit of \$56.00 from E. Covington for partial, addition of tooth and gold inlay.

I made a gold inlay for Kenneth J. Dowse for which, as I previously stated, I received a deposit of \$14.00.

I offered to make Larry Ericks an upper, partial one-piece casting. I received no money for this on account of this work.

I agreed with J. Hagen to make a full upper plate pending clarification by the management. This patient was greatly depressed as a result of having no teeth with which to chew the "grub." The previous dentist, Dr. Lessner, had removed this man's teeth and he needed artificial dentures badly. I received no money from this patient.

I advised J. LaGoda that I would do an inlay pending clarification by the management. I received no money from this patient.

I advised L. O. Taylor that I would let him know as to his dental work pending a reply from the management.

I also advised W. Traynor that I would let him know concerning proposed bridge work as soon as I received a reply from the management.

I was also consulted by N. F. Anderson and offered to make a full upper denture pending a reply from the management.

I was also consulted by several men, among them T. J. Gaut, Robert G. Ott, J. Murray and N. F. Anderson about work done for them by the previous dentist who received money from them and then skipped without furnishing the dental work contracted for or without refunding the money. These men came to me and I told them to make a report to the management regarding their complaints.

Answer to Interrogatory III:

George A. Gardner, of New York City, personnel manager for Atkinson-Jones Construction Company. Robert E. Doyle, personnel manager of said company at Sausalito, California.

Answer to Interrogatory IV:

The representations made by George A. Gardner were made in New York City prior to leaving for San Francisco. He said that he could conceive of no objection on the part of the management to such an arrangement but that, however, further details would have to be worked out with the office in Sausalito.

After arriving in Sausalito and before signing the contract with Atkinson-Jones Construction Company on December 5, 1947, Mr. Robert E. Doyle stated to me, in his office at Sausalito, that the employees of his company were entitled to dental work of an emergency nature only; that they would have

to pay for any other dental work except work of such immediate or emergency nature.

We discussed the conditions under which we had previously worked on other contract positions. Mr. Doyle described the difficulties which had arisen between the previous dentist and management on Okinawa—wherein men who were treated were dissatisfied and unhappy with the type and standard of dental service rendered them. I assured Mr. Doyle that I guaranteed all my dental work unconditionally on the basis of “100% satisfaction or entire fee refunded.” I informed Mr. Doyle that we had the necessary dental equipment and supplies ready for complete dental service and requested permission for extra weight allowance. He stated his approval for the extra weight shipment and further stressed to me before Mr. L. C. Fassett and Mr. Keenan that any work that we might do, other than that of emergency nature, would be between the patient and myself.

/s/ PERCY P. DAVIS,
Plaintiff.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]: Filed April 19, 1950.

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

Defendants, Guy F. Atkinson Company and J. A. Jones Construction Company, respectfully move the court for a summary judgment dismissing this suit, on the following ground:

I.

That the above-entitled court is without jurisdiction of the subject matter of said action for the reason that the same is an action between citizens of different states, and that it appears to a legal certainty from the pleadings and admissions on file herein that the matter in controversy does not and cannot exceed the sum or value of \$3000.00, exclusive of interest and costs. (28 U.S.C. 1332). That there is, therefore, no genuine issue as to any material fact and defendants are entitled to judgment for dismissal as a matter of law. (Federal Rules of Civil Procedure, Rule 56.)

Wherefore, defendants pray for a summary judgment dismissing said action.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney;

/s/ ANTOINETTE E. MORGAN,
Assistant United States
Attorney.

EXHIBIT A

Original Filed

July 7, 1948

File Clerk, U. S. District Court

San Francisco

In the United States District Court for the Northern District of California in the Southern Division

No. 27141-G

AARON M. SARGENT,

Plaintiff,

vs.

J. H. POMEROY, INCORPORATED a Corporation,

Defendant.

MEMORANDUM AND ORDER

At the trial of this cause plaintiff attempted to elicit oral statements made prior to the execution of the formal written agreement. Objection was made and sustained upon the ground that this constituted an attempt to vary the terms of the written agreement. At the afternoon session which followed this ruling plaintiff renewed his offer. He was quite confident of his position. It was apparent that the **entire cause of action** which he espoused depended upon the ruling. Briefs were therefore invited.

It is elementary that all oral negotiations and understandings are merged in the writing, or rather disappear in a legal sense, when a written agree-

ment is entered into as the contract between the parties and such oral statements may be resorted to only for the purpose of showing the real understanding of the parties in case of ambiguity in the contract. Plaintiff's chief point is that there exists ambiguity in the Contract in question, especially as to the term of employment. He points to the following paragraph therein:

“3. The period of service shall be such period as the Employer may desire the services of the Employee, it being understood that the Employee may be transferred from job and/or site of work to another within the Western Pacific Area, if desired by the Employer, but the Employer will not require the Employee to remain in the Western Pacific Area more than twelve (12) months without his consent. The Employee agrees to work for the Employer in accordance with the terms of this Contract until the termination of the period of service.”

I find no ambiguity. The writing expresses in understandable and plain language that the employee will work for the employer for a period of one year, and the employer will hire him for such time as the employer elects.

Plaintiff now raises the point that the contract is not enforceable because of a want of mutuality. He directs attention to the fact that the employee is bound to perform for at least a twelve months period but that the employer may terminate the employment whenever he sees fit.

Pursuant to the contract and in compliance there-

with, and following its execution, the employees, assignors of plaintiff, were transported by defendants to the place of work in the Orient where they performed the agreed services for a length of time. The contract was terminated by the employer under the privilege reserved to it within the twelve months period.

Assuming that the contract at its inception lacked mutuality, it was later executed. It was performed by both parties up to time of its termination, all strictly within its terms. This performance and the conduct of the parties made the contract enforceable. Any lack of mutuality was cured by both parties performing. The consideration relates back to the promise of the employee through performance by him. He has enjoyed the fruits of the understanding. This creates a mutuality of remedy. *Willard, Sutherland & Co. v. U.S.* 262 U.S. 489; 17 C.J.S. 448.

The understanding reached and expressed by the court at the conclusion of the trial was that a further trial would be had if the court ruled in favor of plaintiff upon the question raised. My ruling precludes occasion for further evidence.

Judgment will be for defendant who is to prepare findings in accordance with the local rule.

Dated: July 7, 1948.

/s/ DAL M. LEMMON,

United States District Judge.

Original filed July 7, 1948, file clerk U. S. District Court, San Francisco.

EXHIBIT B

(Copy)

In the Superior Court of the State of California in
and for the City and County of San Francisco

No. 370395

JOHN A. WILSON, et al.,

Plaintiffs,

vs.

GEORGE POLLOCK and GORDON POLLOCK,
Individually and Doing Business as STOCK-
TON-POLLOCK SHIPBUILDING COM-
PANY, a Copartnership, et al.,

Defendants.

JUDGMENT OF NON-SUIT

The above cause came on regularly for trial on March 22, 1951, before the above-entitled court, with a jury, Honorable Frank T. Deasy presiding, upon the fifth and sixth causes of action alleged in the complaint filed herein, and the defendant's answer thereto filed herein, Hugh B. Miller, Esq., and Julius M. Keller, Esq., appearing as attorneys for plaintiff Cecil E. Stemler; Frank J. Hennessy, United States Attorney for the Northern District of California, by Macklin Fleming and Antoinette E. Morgan, Assistant United States Attorneys, appearing for the defendants. At said trial, evidence, both oral and documentary, was introduced on behalf of the plaintiff, Cecil E. Stemler, and said

plaintiff then rested. Whereupon defendants moved the court for a judgment of non-suit herein on the ground that no evidence was introduced at said trial of any breach by any of the defendants of the terms of the written contract between said plaintiff and said defendants, upon which this action is based, or of the making by said defendants to said plaintiff of any false, fraudulent or untrue statement or representation in connection with said contract or with the employment of plaintiff thereunder.

Said motion having been submitted to the court for decision and the court being fully advised,

It Is Therefore, Ordered, Adjudged and Decreed that defendants' motion for judgment of non-suit herein be, and the same is hereby granted, and the above-entitled cause is, as to the plaintiff, Cecil E. Stemler, dismissed, and defendants shall recover their costs of suit herein.

Dated May 21, 1951.

FRANK T. DEASY,

Judge of the Superior Court.

Filed May 21, 1951, Superior Court.

Affidavit of service by mail attached.

[Endorsed]: Filed March 6, 1952. U.S.D.C.

[Title of District Court and Cause.]

ORDER GRANTING MOTION FOR
JUDGMENT OF DISMISSAL

It affirmatively appears from the pleadings, admissions and stipulations that any recovery under the terms of the written contract sued upon would be less than \$3000.00. *Thus the court lacks jurisdiction of the cause. 28 U.S.C. 1332.

It may be that suit or an amended complaint may lie for damages in the jurisdictional amount for fraud or deceit or misrepresentation inducing the execution of the contract.

For that reason, the motion for summary judgment of dismissal is granted without prejudice.

Dated: July 17, 1952.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed July 17, 1952.

*No general or special damage, as claimed in the complaint, is recoverable under the contract, inasmuch as by its provisions, defendants could terminate the contract without cause. In that event, only transportation expenses and travel pay are recoverable. The amount thereof is stipulated to be less than \$3000.00. In the event of termination for cause, neither travel pay nor transportation expenses are recoverable.

[Title of District Court and Cause.]

AMENDED COMPLAINT FOR DAMAGES

Now comes plaintiff above named, and for his amended complaint in the above-entitled action, states and alleges:

I.

That during all of the times herein mentioned said plaintiff was a dentist duly authorized to practice his profession and maintaining an office in the City of New York City, State of New York, and residing in said City of New York City, and that said plaintiff during all of said times was a member of and employed by the Board of Health of said City.

II.

That during all of the times herein mentioned said defendants were and now are corporations duly and regularly created and existing and duly authorized to transact business in the State of California. That said defendants, as joint venturers, were during all of said times contractors under that certain contract No. W-04-470-Eng-1 with the War Department of the United States for the performance of certain construction work on the Island of Okinawa, and that said defendants were during all of said times engaged in such construction work on said Island of Okinawa pursuant to said contract.

III.

That on and prior to the month of November, 1947, in the City of New York City, State of New

York, and at other places, said defendants fraudulently, and with the intent to induce said plaintiff and others to seek employment with said defendants on said Island of Okinawa, did falsely publish, advertise and represent to the public at large, and to said plaintiff, that men were wanted by said defendants for employment on said Island of Okinawa under a one year contract for the performance of work pursuant to said contract between said defendants and the War Department of the United States: and that transportation to and from said Island of Okinawa would be furnished by said defendants; and that limited dental care would be furnished the employees of said defendants without charge.

IV.

That during the month of November, 1947, at the said City of New York City, State of New York, said defendants wrongfully, falsely and fraudulently represented to said plaintiff that if said plaintiff would enter the employment of said defendants as a dentist on the Island of Okinawa, said defendants would hire and employ said plaintiff as such dentist for a period of not less than one year to furnish dental care of an emergency nature only to the employees of said defendants at the site of the work performed by said defendants on the said Island of Okinawa; and that said defendants would pay to said plaintiff the sum of \$150.00 per week and would furnish transportation to said plaintiff from the said City of New York City to the said Island of Okinawa; and that said plaintiff could engage in

the private practice of dentistry on said Island of Okinawa and could furnish any dental work, other than work of an emergency nature, to the employees of the said defendants or to any other person or persons for such compensation as might be agreed upon between said plaintiff and said employees or persons.

V.

That said plaintiff, confiding in and relying wholly upon the representations aforesaid made to him by said defendants, and relying upon the general reputation of said defendants, accepted such employment upon the terms and conditions hereinabove alleged, and that thereupon said plaintiff disposed of and sold his office and dental practice in said City of New York City, restricted himself for several years from practicing his said profession in said City of New York City, resigned from the Board of Health of said city, and sold a large portion of his dental equipment, and all of his furniture and furnishings and other belongings and his automobile, and said plaintiff gave up his apartment, all at a substantial and serious loss to said plaintiff.

VI.

That thereafter and on the 5th day of December, 1947, at the City of Sausalito, County of Marin, State of California, said defendants wrongfully and fraudulently, and with the intent to induce said plaintiff to enter into the employment of said defendants and to sign and execute the written contract of employment hereinafter referred to, did

again falsely represent to said plaintiff that the employment of said plaintiff by said defendants would be for a period of not less than one year; that the employees of said defendants, employed on the said Island of Okinawa, were entitled under their contracts of employment with said defendants to dental work of an emergency nature only; and that said plaintiff could engage in the private practice of dentistry on said Island of Okinawa and furnish any other dental work desired by said employees or by other persons and receive compensation therefor to be paid by said employees or other persons.

That said defendants, by means of said false, fraudulent and deceitful pretenses and representations, after making the same as aforesaid, wrongfully and fraudulently induced said plaintiff to sign and execute a certain written contract, dated on the 5th day of December, 1947, purporting to hire and employ said plaintiff as a dentist at the site of the construction work performed by said defendants on the said Island of Okinawa, and that said plaintiff did then and by reason thereof sign and execute said written contract.

VII.

That thereupon, and relying upon the representations so made as aforesaid by said defendants, said plaintiff shipped to said Island of Okinawa a complete operative, prosthetic, crown and bridge kits and engine, all of which equipment had no relation to emergency dental work, and that said defendants authorized a special weight allowance to said plain-

tiff in shipping said equipment. That thereupon said defendants caused said plaintiff to be transported to said Island of Okinawa, where said plaintiff immediately entered upon the employ of said defendants.

VIII.

That each of the representations so made was false and fraudulent, and was designedly, falsely and fraudulently made for the purpose of deceiving said plaintiff and inducing him to enter into the employment of said defendants upon their own terms and conditions and to sign and execute the said purported written contract of employment; that said plaintiff relied wholly upon the representations of the said defendants, and believed them and each of them to be true, and was induced thereby, and not otherwise, to enter into the said employment and to sign and execute the said written contract, and would not have entered said employment or executed said contract had he not believed said representations and each of them to be true. That in truth and in fact, said defendants well knew that said employment was terminable at the will of said defendants, and that under the rules and regulations of the United States applicable to said Island of Okinawa the said plaintiff could not engage in the private practice of dentistry on said Island.

IX.

That after arriving on said Island of Okinawa said plaintiff was notified by said defendants that he could not engage in the private practice of den-

tristry, and that said plaintiff was thereupon prevented by said defendants from engaging in such private practice. That said plaintiff was further notified by said defendants that he did not have a one year contract but that his employment could be terminated at any time at the will of said defendants. That thereupon said defendants refused and have ever since refused to allow said plaintiff to perform the duties of his employment, or to engage in the private practice of dentistry on said Island of Okinawa, and that said plaintiff was thereupon discharged and his employment terminated without just cause and against his will.

X.

That said plaintiff has been at all times able, willing and anxious to perform the terms of his employment and the work for which he had been hired, and that his discharge was and is unlawful and without just cause and against his will and all contrary to and in violation of the terms of his employment with said defendants.

XI.

That upon the termination of said employment and the discharge of said plaintiff as aforesaid, said defendants refused to furnish the said plaintiff transportation from said Island of Okinawa to his home in New York City, New York, and that said plaintiff received no further compensation or salary or subsistence. That said plaintiff was compelled to

and did pay for his subsistence until his return to New York City, and his expenses of transportation and of the transportation of his dental equipment from the Island of Okinawa to New York City.

XII.

That by reason of the facts aforesaid said plaintiff has been damaged in the sum of Ten Thousand and no/100 (\$10,000.00) Dollars for the loss of his dental practice in New York City; in the further sum of Two Thousand and no/100 (\$2,000.00) Dollars for the loss of his position with the New York City Board of Health; in the further sum of Two Thousand Seven Hundred and no/100 (\$2,700.00) Dollars for expenses of transportation from said Island of Okinawa to New York City, including the return of his dental equipment; in the further sum of Four Thousand One Hundred Fifty and no/100 (\$4,150.00) Dollars for the loss suffered by said plaintiff from the sale of his said automobile, dental equipment and furniture and furnishings.

XIII.

That by reason of the facts aforesaid said plaintiff has been damaged in the further sum of Twenty-five Thousand and no/100 (\$25,000.00) Dollars as and for general damages.

Wherefore, said plaintiff prays judgment against said defendants, and each of them, in the sum of Twenty-five Thousand and no/100 (\$25,000.00) Dollars general damages and the further sum of Eighteen Thousand Eight Hundred Fifty and no/100

(\$18,850.00) Dollars special damages, together with his costs and disbursements incurred, and for such other and further relief as to the Court may seem just and equitable.

/s/ G. H. VAN HARVEY,
Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed January 22, 1953.

[Title of District Court and Cause.]

ANSWER TO AMENDED COMPLAINT
FOR DAMAGES

Come Now defendants Guy F. Atkinson Company and J. A. Jones Construction Company, and answering the amended complaint of plaintiff on file herein, allege as follows:

I.

Defendants are without sufficient information or belief to answer the allegations of paragraph I, and placing their denial on that ground, deny such allegations.

II.

Admit the allegations of paragraph II.

III.

Deny the allegations of paragraphs III, IV, V and VI.

IV.

Answering the allegations of paragraph VII, admit that defendants caused plaintiff to be transported to Okinawa, where plaintiff immediately entered upon the employ of said defendants. Deny the remaining allegations of paragraph VII.

V.

Answering the allegations of paragraph VIII, admit that pursuant to the express terms of the written contract entered into by the plaintiff and defendants on the 5th day of December, 1947, plaintiff's employment was terminable at the will of said defendants. Admit that under the rules and regulations of the United States applicable to Okinawa, plaintiff could not engage in the private practice of dentistry on said island. Deny the remaining allegations of paragraph VIII.

VI.

Answering the allegations of paragraph IX, admit that after arriving on Okinawa, plaintiff was notified by defendants that he could not engage in the private practice of dentistry, and in this respect allege that under the terms and conditions of the written contract of employment between plaintiff and defendants there was no agreement with defendants that plaintiff could engage in the private practice of dentistry. It is further alleged that at no time, either before or after the signing of said contract, did defendants, or either of them, author-

ize plaintiff, or represent to plaintiff, that he would be permitted to engage in the private practice of dentistry on Okinawa. Deny that plaintiff was further notified by said defendants, or either of them, that he did not have a one year contract, or that his employment could be terminated at any time at the will of said defendants. In this regard defendants allege that pursuant to the terms of said written contract, and particularly Section 2 thereof, said employment was terminable at any time at the will of said defendants. Deny that defendants, or either of them, refused to allow plaintiff to perform the duties of his employment, and in this regard, allege that plaintiff failed to perform the duties and conditions of his employment. Deny that plaintiff was discharged or his employment terminated without just cause, and in this regard, allege that plaintiff was discharged for cause, in accordance with the terms and provisions of said written contract.

VII.

Deny the allegations of paragraph X.

VIII.

Admit the allegations of paragraph XI except that defendants are without information or belief as to the place in the United States where plaintiff returned following the termination of his employment, and placing their denial on that ground, deny the allegations in regard to the place of return.

IX.

Deny the allegations of paragraphs XII and XIII.

As and for a Second Defense Defendants Allege as Follows:

I.

The complaint does not state facts sufficient to constitute a claim upon which relief can be afforded against defendants or each of them.

As and for a Third Defense Defendants Allege as Follows:

I.

On the 5th day of December, 1947, at Sausalito, California, plaintiff and defendants made and entered into that certain contract in writing hereinabove referred to. A true copy of said contract has heretofore been attached as "Exhibit A" to defendants' answer to plaintiff's original complaint, which answer was filed in this action on August 12, 1949. Defendants incorporate herein by reference said "Exhibit A" to their original answer. In accordance with the terms and provisions of said contract, plaintiff was transported to Okinawa. Thereafter, contrary to specific instructions given to plaintiff by defendants, and in violation of the terms and provisions of such contract, plaintiff conducted the private practice of dentistry while employed under the terms and provisions of said contract, and did demand and receive fees and gratuities from employees of defendants for dental services rendered

to such employees of defendants, all of which dental services were to be rendered without charge by plaintiff, in accordance with said terms and provisions of said contract.

II.

Plaintiff was informed and advised prior to the execution of said written contract that demand for, or acceptance of, any fees or gratuities by him for dental services rendered by him to employees of defendants would constitute grounds for discharge. Upon plaintiff's arrival in Okinawa he was further advised and warned that demand for, or acceptance of, any fees or gratuities would constitute grounds for discharge. Notwithstanding such advice and such warning and the provisions of said contract, plaintiff did demand, receive and accept fees and gratuities of employees of defendants for dental services thereafter, and in accordance with said terms and conditions of said written contract, plaintiff was discharged for cause.

III.

Defendants have at all times fully performed all the terms and conditions of said written contract on their part to be performed, and have paid the plaintiff in full any and all sums of money to which plaintiff may have been entitled in accordance with the terms and provisions of said written contract.

Wherefore, defendants pray that plaintiff take nothing by his action; that the action be dismissed

and that defendants have their costs and such other and further relief as may be proper in the premises.

LLOYD H. BURKE,

United States Attorney;

By /s/ GEORGE A. BLACKSTONE,

Assistant United States Attorney, Attorneys for Defendants.

Affidavit of mailing attached.

[Endorsed]: Filed July 28, 1953.

[Title of District Court and Cause.]

REQUEST FOR ADMISSIONS AND INTER-
ROGATORIES PROPOUNDED BY DE-
FENDANTS

Defendants request plaintiff within fifteen days after service of this request to admit, for the purpose of this action only, that the contract attached to defendants' answer to the original complaint in the above action as Exhibit A is a true and correct copy of the written contract between plaintiff and defendants alleged in paragraph VI of the amended complaint.

Defendants propound the following interrogatories to be answered by plaintiff under oath within fifteen days after the service hereof:

1. What is the name and position of each person who you claim made the misrepresentations alleged in your amended complaint?
2. At what particular place and on what date

was each of the alleged misrepresentations made to you?

3. Who was present at the time each of the alleged misrepresentations was made to you?

4. With reference to each alleged misrepresentation, state fully and completely each and every conversation, act and occurrence upon which you base your claim.

LLOYD H. BURKE,

United States Attorney;

/s/ GEORGE A. BLACKSTONE,

By GEORGE A. BLACKSTONE,

Assistant United States Attorney, Attorneys for
Defendants.

Affidavit of mailing attached.

[Endorsed]: Filed October 26, 1953.

[Title of District Court and Cause.]

ANSWERS OF PLAINTIFF TO INTERROGA-
TORIES PROPOUNDED BY DEFEND-
ANTS

Comes now Percy P. Davis, plaintiff above-named, and in response to the interrogatories numbered 1 to 4, both inclusive, propounded to him in the above-entitled action, makes the following answers:

Answer to Interrogatory 1:

George A. Gardner, personnel manager of Guy F. Atkinson Company and J. A. Jones Construction Company at New York City, New York;

Robert E. Doyle, personnel manager of Guy F. Atkinson Company and J. A. Jones Construction Company at Sausalito, California.

Answer to Interrogatory 2:

At New York City, New York, in November, 1947;

At Sausalito, California, on or about December 5, 1947.

Answer to Interrogatory 3:

The only person present at New York City, New York, at the time the alleged misrepresentations were made to me was, in addition to George A. Gardner and myself, my wife, Florence A. Davis.

At Sausalito, California, the persons present at the time the alleged misrepresentations were made to me were, in addition to Robert E. Doyle and myself, L. C. Fassett, a Mr. Keenan, whose first name I do not remember, and my wife, Florence A. Davis.

Answer to Interrogatory 4:

During the months of November and December, 1947, Guy F. Atkinson Company and J. A. Jones Construction Company advertised in several newspapers in New York City, New York, offering employment on the Island of Okinawa. The published advertisement also notified applicants for such employment to present themselves to George A. Gardner at New York State Employment Service, 87 Madison Avenue (Twenty-eighth Street), New York

City. The advertisement further provided for a one year contract with transportation furnished.

In reliance upon said advertisement my wife, Florence A. Davis, and I, then residing on Long Island, New York, conferred with Mr. George A. Gardner with respect to employment as dentist for myself and dental assistant, for my wife. I stated to Mr. Gardner that my wife and I could not accept the positions purely on a salary basis unless I would be allowed to engage in private practice. Mr. Gardner stated that no private fees could be permitted because of government regulations which forbade the use of government property for private purposes. I then suggested that I be allowed to use certain equipment of my own for such purpose. Mr. Gardner, who had been in contact with the Sausalito office of Atkinson-Jones, said that he could conceive of no objection on the part of the management to such arrangement, and that further details would be worked out with the office in Sausalito.

After arriving in Sausalito, California, and before signing the contract with Guy F. Atkinson Company and J. A. Jones Construction Company on December 5, 1947, my wife and I had a conference with Mr. Robert E. Doyle at his office in Sausalito. We discussed the conditions under which my wife and I had previously worked on other contract positions, and that on such previous positions we had been permitted to engage in private practice and to receive private fees for particular serv-

ices. I told Mr. Doyle, as I had previously told Mr. Gardner, that my wife and I could not accept the employment purely on a salary basis unless I would be allowed to engage in private practice. I also told Mr. Doyle that I would use my own equipment in my private practice. Mr. Doyle stated that the employees of his company were entitled to dental work of an emergency nature only, and that if they wanted other dental work done they would have to pay for such work. He told me that any work that I might do for any employee of his company, other than work of an emergency nature, would be between the patient and me, and that the patient would have to pay for such work. Mr. Doyle described the difficulties which had arisen between the previous dentist and management on Okinawa, wherein men who were treated were dissatisfied and unhappy with the type and standard of dental services rendered them. I assured Mr. Doyle that I guaranteed all my dental work unconditionally on the basis of "100% satisfaction or entire fee refunded." I also told Mr. Doyle that we had the necessary dental equipment and supplies ready for complete dental service and I requested permission for an extra weight allowance in shipping the equipment to Okinawa. He gave his approval for the extra weight shipment.

I asked Mr. Doyle for a definite contract setting forth the provisions with regard to private work, but he told me that it would not be possible to sign such special contract because only a general con-

tract was available for all employees. He stressed the fact before Mr. Fassett and Mr. Keenan that the contract with the employees called only for emergency dental work and that any work that we might do, other than work of an emergency nature, would be between the patient and myself.

.....,

Plaintiff.

Duly verified.

Receipt of copy acknowledged.

[Endorsed]. Filed December 1, 1953.

[Title of District Court and Cause.]

AFFIDAVIT ADMITTING MATTERS IN DEFENDANTS' REQUEST FOR ADMISSIONS

State of Oregon,

County of Multnomah—ss.

Percy P. Davis, being first duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action. That said plaintiff was served with written notice by the defendants above named to admit the truth of the matters of fact in defendants' request for admissions and in answer thereto said plaintiff admits, for the purpose of this action only, that the contract attached to defendants' answer to the original complaint in the above action as Exhibit A is a true and correct copy of the written contract be-

tween plaintiff and defendants alleged in paragraph VI of the amended complaint.

/s/ PERCY P. DAVIS.

Subscribed and sworn to before me this 19th day of November, 1953.

[Seal] /s/ ELIZABETH M. MUNDORFF,
Notary Public in and for the County of Multnomah, State of Oregon.

My commission expires Feb. 10, 1956.

[Endorsed]: Filed December 1, 1953.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR
SUMMARY JUDGMENT

To: Plaintiff Percy P. Davis, and to G. H. Van Harvey, Esq., his Attorney:

You and each of you will please take notice that on Monday, the 21st day of December, 1953, at the hour of 9:30 a.m., or as soon thereafter as counsel may be heard, defendants will move the above-entitled Court in Room 258 Federal Post Office and Court House Building, Seventh and Mission Streets, San Francisco, California, for summary judgment on the following grounds:

(1) That there is no triable issue of fact and that it affirmatively appears from the records and

files in the action that plaintiff has failed to state a claim upon which relief can be granted;

(2) That the basis of Federal jurisdiction does not affirmatively appear.

This motion will be based upon this Notice, the attached Memorandum of Points and Authorities, and all the records and files in the action.

LLOYD H. BURKE,
United States Attorney;

By /s/ GEORGE A. BLACKSTONE,
Assistant United States Attorney, Attorneys for
Defendants.

Affidavit of mailing attached.

[Endorsed]: Filed December 9, 1953.

[Title of District Court and Cause.]

ORDER GRANTING MOTION OF
DEFENDANTS FOR SUMMARY JUDGMENT

Heretofore* the court granted defendants' motion for dismissal, without prejudice to the filing of an amended complaint for damages for fraud or deceit. Such an amended complaint was filed.

Defendants have now moved for summary judgment in their favor. The ground of the motion is that plaintiff's answers to interrogatories pro-

*See order of July 17, 1952.

pounded by defendants show that plaintiff has no cause of action as alleged in the amended complaint.

Plaintiff's answers to interrogatories 1, 2 and 3 affirmatively show that the written contract executed by the parties was not induced by any fraud or misrepresentation of any kind by the defendants.

Summary judgment may enter in favor of defendants.

Dated: December 28, 1953.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed December 29, 1953.

In the United States District Court for the Northern District of California, Southern Division
Civil Action No. 28816

PERCY P. DAVIS,

Plaintiff,

vs.

GUY F. ATKINSON COMPANY, a Corporation,
et al.,

Defendants.

SUMMARY JUDGMENT

The motion for summary judgment of defendants coming on regularly to be heard on December 28, 1953, upon notice of motion duly filed and served.

and the Court having considered and granted said motion, by order filed on December 29, 1953,

It Is Ordered, Adjudged and Decreed that plaintiff take nothing by his action, that the same be and hereby is dismissed, and that judgment be entered for defendants with costs.

Dated: January 4th, 1954.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed January 4, 1954.

Entered January 5, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Percy P. Davis, plaintiff and appellant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the summary judgment entered in this action on the 5th day of January, 1954.

Dated this 1st day of February, 1954.

/s/ G. H. VAN HARVEY,
Attorney for Plaintiff and Appellant Percy P.
Davis.

[Endorsed]: Filed February 2, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein:

Complaint for damages for breach of contract.
Answer.

Interrogatories propounded by defendants to plaintiff under Rule 33 Federal Rules of Civil Procedure.

Answers of plaintiff to interrogatories propounded by defendants.

Interrogatories propounded by defendants to plaintiff under Rule 33 Federal Rules of Civil Procedure.

Request for admission of genuineness of documents, under Rule 36.

Motion for Summary Judgment.

Order granting motion for judgment of dismissal.

Notice of motion for leave to file amended complaint.

Amended complaint for damages.

Order granting motion for leave to file amended complaint.

Answer to amended complaint for damages.

Request for admissions and interrogatories propounded by defendants.

Answers of plaintiff to interrogatories propounded by defendants.

Affidavit admitting matters in defendants' request for admissions.

Notice of motion for summary judgment.

Order granting motion of defendants for summary judgment.

Summary Judgment.

Notice of appeal.

Bond for costs on appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of March, 1954.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ WM. C. ROBB,
Deputy Clerk.

[Endorsed]: No. 14262. United States Court of Appeals for the Ninth Circuit. Percy P. Davis, Appellant, vs. Guy F. Atkinson Company, a Corporation, and J. A. Jones Construction Company, a Corporation, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed March 10, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14262

PERCY P. DAVIS,

Plaintiff and Appellant,

vs.

GUY F. ATKINSON COMPANY, a Corporation,
and J. A. JONES CONSTRUCTION COM-
PANY, a Corporation,

Defendants and Respondents.

STATEMENT OF POINTS ON APPEAL

Plaintiff and appellant herewith presents the
points upon which he intends to rely on appeal:

1. That the Court erred in allowing the motion
of defendants for summary judgment.

2. That the Court erred in entering judgment
that plaintiff take nothing by his amended com-
plaint.

Dated March 19, 1954.

/s/ G. H. VAN HARVEY,

Attorney for Plaintiff and
Appellant.

Copy of the within Statement of Points on Ap-
peal is hereby admitted this 19th day of March, 1954.

/s/ LLOYD H. BURKE,

United States Attorney;

/s/ GEO. A. BLACKSTONE,

Deputy United States
Attorney.

[Endorsed]: Filed March 19, 1954.

